

JUDGE CAPRONI

14 CV 9899
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

ATHENA ROSE,

Plaintiff

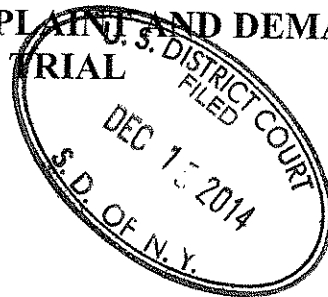
v.

VERDE ENERGY USA, INC.,

Defendant

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL



COMPLAINT

ATHENA ROSE ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331.
3. Defendant conducts business in the State of New York and as such, personal jurisdiction is established.
4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing Yonkers, New York 10703.

6. Plaintiff is a "person" as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its office located in Norwalk, Connecticut 06851.

8. Defendant is a "person" as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that she has had for more than one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Plaintiff never provided permission to Defendant to call her cellular telephone number or to contact her regarding any goods or services offered by Defendant.

14. Beginning in October 2014, and continuing through November 2014,

1 Defendant called Plaintiff on her cellular telephone.

2 15. When contacting Plaintiff on her cellular telephone, Defendant used
3 an automatic telephone dialing system and/or automatic and/or pre-recorded
4 messages.
5

6 16. Defendant's messages would state its name and that its call was "for
7 marketing purposes."
8

9 17. Defendant's telephone calls were not made for "emergency purposes."

10 18. In order to stop the calls, on one occasion, Plaintiff answered
11 Defendant's call and told them to stop calling her.
12

13 19. Defendant continued to call Plaintiff on her cellular telephone, despite
14 not having consent to call her on that number.

15 **DEFENDANT VIOLATED THE**
16 **TELEPHONE CONSUMER PROTECTION ACT**

17 20. Plaintiff incorporates the forgoing paragraphs as though the same were
18 set forth at length herein.

19 21. Defendant initiated multiple automated telephone calls to Plaintiff's
20 cellular telephone using a prerecorded voice.
21

22 22. Defendant initiated these automated calls to Plaintiff using an
23 automatic telephone dialing system.
24

25 23. Defendant's calls to Plaintiff were not made for emergency purposes.

1 24. Defendant's calls to Plaintiff were not made with Plaintiff's prior
2 express consent.

3 25. Defendant's acts as described above were done with malicious,
4 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
5 under the law and with the purpose of harassing Plaintiff.
6

7 26. The acts and/or omissions of Defendant were done unfairly,
8 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
9 lawful right, legal defense, legal justification or legal excuse.
10

11 27. As a result of the above violations of the TCPA, Plaintiff has suffered
12 the losses and damages as set forth above entitling Plaintiff to an award of
13 statutory, actual and trebles damages.
14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, ATHENA ROSE, respectfully prays for a
17 judgment as follows:
18

- 19 a. All actual damages suffered pursuant to 47 U.S.C. §
20 227(b)(3)(A);
21 b. Statutory damages of \$500.00 per violative telephone call
22 pursuant to 47 U.S.C. § 227(b)(3)(B);
23 c. Treble damages of \$1,500 per violative telephone call pursuant
24 to 47 U.S.C. §227(b)(3);
25

- 1 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
2
3 e. Any other relief deemed appropriate by this Honorable Court.


4 **DEMAND FOR JURY TRIAL**

5 PLEASE TAKE NOTICE that Plaintiff, ATHENA ROSE, demands a jury
6 trial in this case.

7
8
9 RESPECTFULLY SUBMITTED,

10 DATED: 12/11/2014

KIMMEL & SILVERMAN, P.C.

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